The

RPORATION JOURNAL

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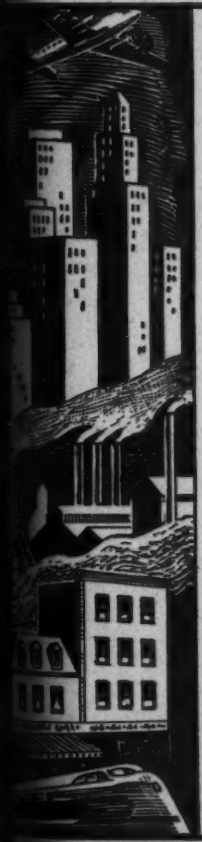

...*ed by* The Corporation Trust Company and Associated Companies

OH, THE upset of those jobs that pounce on the office force of a corporation acting as its own Transfer Agent! . . . THE preparation of a dividend list—figuring and writing of dividend checks—preparation and mailing of proxies—checking proxies—and on, and on; rush! rush! rush! . . . A REGULAR Transfer Agent with an organization continuously keyed to such rushes, with a staff trained and long experienced in the details, with full equipment for handling the largest of such jobs with hardly a ripple—addressing machines, enclosing machines, check-writing machines, postage meters, mail opening machines, bookkeeping and computing machines—such a Transfer Agent can remove much of the foreboding and worry of doing business under present-day conditions . . . ESPECIALLY does it help the officers and directors of businesses suffering these days from scarcity in skilled office help . . . WHY NOT go so far as to investigate with, say, just an informal talk with the nearest C T office?

The
CORPORATION JOURNAL

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JUNE—JULY 1953

Contents

Recent Decisions

"Qualifications? No thank you! That stuff's a technical bogey of you lawyers. Just gets corporations like ours involved in more reports to file and more taxes to pay. Leave us alone, we're doing all right as we are."

If not in those exact words, at least to that effect, has many an obdurate corporation official answered his lawyer's advice to qualify the corporation as foreign in the state or states in which it is doing business.

One of them was a client of yours, probably—and you the lawyer. But one of these days he will have you on the 'phone again, and "Get our company qualified in such and such and such states," will be the burden of his talk then. "Get it going quickly—today—jump on it —please!"

For the going gets steadily rougher and more dangerous for corporations actually doing business in states away from home without being properly qualified. All the information disclosed to the various states under laws such as Social Security, Workmen's Compensation, and so on, make a corporation's non-compliance with foreign corporation law plainly ible to any state official who w to look. A good target for penalties that never used to enforced.

You may have a corporation c on your doorstep tomorrow wi demand for quick action in on ten or twenty states. And the no other way in all the world give a client such quick actio quicker than he ever thought could give him — as when you e ploy C T services. Extracts f the statutes of each different st . . . all the official information need . . . then C T offices and r resentatives in every state to han the filing and recording of pap . . . a trained, experienced speci ist in corporate representation be designated as the client's stat tory agent. That's C T service.

And it is all *service for the la*

unlicensed foreign corporations

Enforcement of Contracts

THERE is considerable variation to be found in the attitude of the various states toward the enforcement, in the state's courts, of contracts which are entered into within the state by unlicensed foreign corporations at a time when they are doing business locally.

All but eight states have legislation on their statute books either denying the right to enforce such contracts or stipulating conditions with which compliance must first be effected before the state's courts may be employed to enforce the contracts.

In these eight states, where legislation is lacking with respect to the local enforcement of local contracts by an unlicensed foreign corporation which is doing business when entering into local contracts, the trend, as revealed by decisions, is to permit the use of state courts by the corporation, as in Delaware, Georgia, Kansas, Kentucky and North Carolina. (Delaware: *Model Heating Co. v. Magarity,* 81 Atl. 394; Georgia: *Alston v. N. Y. Contract Purchase Corp.,* 138 S. E. 270; Kansas: *Heart of America Ins. Agency, Inc. v. Wichita Cab & Transport Co.,* 99 P. 2d 765; Kentucky: *Big Four Mills v. Commercial Credit Co.,* 211 S. W. 2d 831; North Carolina: *G. Ober Sons Co. v. Katzenstein,* 76 S. E. 476.) However, in Nebraska, there appears to be a decision permitting an unlicensed foreign corporation to sue under certain circumstances, (*North West Ready Roofing Co. v. Antes,* 219 N. W. 848), and one denying such a corporation the right to maintain suit, (*Refrigeration & Air Conditioning Institute, Inc. v. Hilyard,* 18 N. W. 2d 548), while in Tennessee such contracts have been regarded by the courts as unenforceable, (*Interstate Amusement Co. v. Albert,* 239 U. S. 560; *Peck-Williamson H. & V. Co. v. McNight & Merz,* 205 S. W. 419; In re *Meyer & Judd,* 1 F. 2d 513; *United Artists Corp. et al. v. Board of Censors,* 225 S. W. 2d 550, certiorari denied, 339 U. S. 952, 70 S. Ct. 839.) In South Carolina, a Federal court has viewed the right to sue as suspended until qualification is effected. (*Kirven v. Virginia-Carolina Chemical Co.,* 145 Fed. 288.)

The remaining forty states may be divided into two general groups:

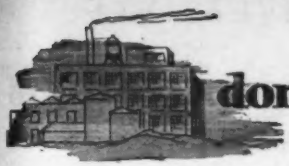
In one group, under the statutes, if an unlicensed foreign corporation, while carrying on intrastate business, enters into a contract within the state relating to intrastate business, the contract may not be enforced in the state courts, even though the corporation is later authorized to do intrastate business. The states in this group are Alabama, Arizona, Arkansas, Idaho, Iowa, Michigan, Mississippi, Missouri, New Jersey (reciprocal statute is applicable to corporations incorporated in states in this group—*Babe Kaufman Music Corp. v. Mandia et al.,* 13 A. 2d, 790), New York, South Dakota, Texas, Utah, Vermont and Wyoming.

In a second group, by statute, if an unlicensed foreign corporation, while carrying on intrastate business, enters into a contract within the state relating to intrastate business, the contract may not be enforced in the state courts until the corporation has first obtained au-

thority to do intrastate business. This group is comprised of California, Colorado, Connecticut, Florida, Illinois, Indiana, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, (New Jersey —reciprocal statute is applicable to corporations from states in this group), New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Virginia, Washington, West Virginia and Wisconsin. In seven of these states, California, Connecticut, Florida, Maryland, Ohio, Pennsylvania and Wisconsin, payment of specific penalties is called for before qualification can be effected and suit maintained in the state courts.

As to the status of such unlicensed foreign corporations as plaintiffs in the Federal courts, it may be anticipated that the Federal courts could be expected to apply, so far as state statutes and rulings are available, the corresponding restrictions which counsel for such plaintiff corporations would find applicable to them in litigation in the state courts under the same circumstances, by reason of the ruling of the Supreme Court of the United States in *Woods v. Interstate Realty Co.*, 337 U. S. 535, 69 S. Ct. 1235. There it was held, in a suit based on diversity of citizenship, that an unlicensed foreign corporation, doing business in a state, which was barred by state law from suing in the state courts because of failure to qualify, was barred, to the same extent, from suing in a Federal Court sitting in that state.

It may be noted that an unlicensed foreign corporation has been held to be in a position to maintain suit upon a contract which had been entered into in a state other than that in which the suit was instituted. (*Bonham National Bank v. Grimes Pass Placer Mining Co., Ltd.*, (Idaho) 111 Pac. 1078; *Burch Mfg. Co., Inc. v. McKee*, (Iowa) 2 N. W. 2d 98; *Furst-McNess Co. v. Kielly*, (Iowa) 8 N. W. 2d 730; *Holder v. Aultman Miller & Co.*, (Mich.) 169 U. S. 81; *Manhattan Overseas Co., Inc. v. Camden County Beverage Co.*, (N. J.) 15 A. 2d 217; *Transradio Press Service, Inc. v. Whitmore*, (N. M.) 137 P. 2d 309; *Bertolf Bros., Inc. v. Leuthardt*, (N. Y.) 26 N. Y. S. 2d 114.)



domestic corporations

DELAWARE

Where directors authorized mailing of notice of annual meeting to stockholders, with a form of proxy not setting forth the proposed slate of directors, and where plaintiff director's name was withdrawn from slate prior to the annual meeting, court finds preliminary injunction to restrain election of directors not justified.

Plaintiff sought to enjoin defendant corporation and certain of its officers and directors from proceeding with the election of directors at the annual meeting of stockholders. He had been a director since 1941 and had always been elected as a result of management proxies mailed to stockholders, the proxies being in the form of general powers of attorney and not setting forth a proposed slate of directors. In accordance with its customary practice, the board of directors had duly authorized certain officers to mail to each stockholder a written notice of the annual meeting of stockholders, enclosing a form of proxy, a copy of a proposed underwriting contract setting forth a refinancing plan to be submitted by the directors for the approval of the stockholders, with a covering letter from the president explaining this plan. Prior to the stockholders' meeting, plaintiff objected to the refinancing plan, and, as a result, the board of directors rescinded the plan. At a further meeting of the directors over objection of plaintiff, a slate of directors including all of the old directors, with the exception of plaintiff, and adding two new directors, one to replace plaintiff and another to replace a deceased director, was approved. At the time this occurred, stockholders representing a large majority of the outstanding voting stock of the corporation had sent their proxies to the management committee.

The Court of Chancery, New Castle County, stated that the sole question for its determination was "whether the defendant corporation, through its officers and directors, other than plaintiff, acted improperly in failing to reveal to the stockholders the intention not to reelect plaintiff as a director." The court, after a consideration of the circumstances, found nothing to justify the issuance of a preliminary injunction, and concluded that the application for such an injunction should be dismissed.

Hauth v. Giant Portland Cement Company et al., Court of Chancery, New Castle County, April 15, 1953. James R. Morford and William Marvel (of Morford, Bennethum & Marvel) of Wilmington, and Leo Brady (of Gordon, Brady, Caffrey & Keller) of New York City, for plaintiff. David F. Anderson (of Berl, Potter & Anderson) of Wilmington, and A. O. Dawson (of Dorr, Hand & Dawson) of New York City, for defendants. Commerce Clearing House Court Decisions Requisition No. 493643.

foreign corporations

DELAWARE

Continuous pattern of business activity over a substantial period ruled sufficient to uphold service of process.

Defendant Illinois corporation appeared specially in the Superior Court and moved to quash service which had been made upon an officer of defendant while temporarily within the State of Delaware. The question raised by the motion to quash was whether or not the defendant was "doing business" within the state to an extent justifying service upon it under the statutes. The court below denied the motion to quash.

In considering the question whether the Superior Court had jurisdiction over the defendant and concluding that it had such jurisdiction and that the motion to quash the service was properly denied, the Supreme Court of Delaware found the corporation's activities with respect to Delaware to be sufficient to subject the corporation to suit in the courts of Delaware, regarding it as doing business there. The defendant's activities consisted of (1) active solicitation of business through a continuous course of business over a number of years; (2) a continuous course of supervision and policing of the defendant's wholesalers and retailers in connection with the maintenance of a price structure for its products pursuant to its Fair Trade Contracts with Delaware distributors; (3) on one occasion, in connection with a sales promotion program, the warehousing in Delaware of a large inventory of electrical appliances from which orders to Delaware retailers were filled; (4) the institution against the present plaintiff of a suit to enforce its Fair Trade Contract prices; (5) generally speaking, the promotion, advertising and display of its products in Delaware. The court remarked: "Whether, therefore, the motion be considered as being governed solely by the requirements of due process of the Fourteenth Amendment of the Federal Constitution, or whether it be considered as being governed by a limitation upon those concepts imposed by our State Legislature in 1935 Code, Sec. 2247, the result is the same. The defendant is doing business in Delaware and, thus, may be subjected to suit in the courts of Delaware. The motion to quash the service upon the defendant was properly denied."

Klein v. Sunbeam Corp., 94 A. 2d 385. John Van Brunt, Jr. and David Snellenberg II of Killoran & Van Brunt of Wilmington, for appellant. David F. Anderson and James L. Latchum of Berl, Potter & Anderson of Wilmington, for appellee. *(Note: This opinion was adhered to upon limited reargument granted by the Supreme Court of Delaware, 95 A. 2d 460, where the court ruled that a statutory provision that "suits may be brought against any corporation, at law by summons, and by subpoena in Chancery," related to both domestic and foreign corporations.)*

ILLINOIS

Unlicensed corporation, engaged only in furthering interstate commerce, ruled not amenable to service of process.

The United States Court of Appeals, Seventh Circuit, has affirmed a judgment of an Illinois Federal District Court quashing service of summons and dismissing the complaint of an Illinois corporation against a Maryland company, based on diversity of citizenship. Service was effected upon a person alleged to be the Western Manager of the defendant, the return of the Marshal stating that the president of the corporation was not found in his District. The defendant was not licensed in Illinois. The person served had authority only to solicit business and orders for it, subject to approval at its principal place of business in Maryland. All goods shipped or delivered on all orders accepted by the defendant were shipped by it from Baltimore, Maryland, on an f. o. b. basis only. In addition, defendant maintained an office in Chicago, its name being on the door and listed in the telephone directory and printed on stationery bearing the company's name and Chicago address. A Chicago bank account was maintained, to cover payment of salaries of stenographic help, for supplies and other expenses.

The court, after an examination of Illinois decisions, applied the rule, which it regarded as firmly established in Illinois, "that a foreign corporation whose activities are limited solely to solicitation of interstate business in that State is not amenable to process".

Canvas Fabricators, Inc. v. William E. Hooper & Sons Co., 199 F. 2d 485. Leonard J. Braver, and Silverstein & Stein of Chicago, for appellant. Cushman B. Bissell, Stephen A. Milwid and Lord, Bissell & Kadyk of Chicago, for appellee.

MASSACHUSETTS

Motion to dismiss suit against unlicensed foreign corporation allowed, where service was made, under statute, upon state official who had no address to which to forward copy of process.

In *Nichols v. Cowles Magazines, Inc.*, 103 F. Supp. 864, (The Corporation Journal, October—November, 1952, page 153), the United States District Court, District of Massachusetts, ruled that service of process upon an unlicensed foreign corporation in a federal suit, not related to business done in Massachusetts, was to be set aside where service was effected upon the Commissioner of Corporations and Taxation of Massachusetts under Section 3A, Chapter 181, General Laws, as agent for unlicensed foreign corporations doing business in the state.

Subsequently, the defendant moved for a rehearing on a motion to dismiss and for leave to file further clarifying affidavits and rehearing and leave were granted. Plaintiff filed an application for an order of notice under Section 37

of Chapter 223. The District Court dismissed this application and allowed defendant's motion to dismiss. The court noted that Section 37 required the Commissioner to forward a copy of process served upon him to the company. This section was regarded as not applicable to an unlicensed company under the circumstances of the case, there being no address on file to which the copy could be sent. "It thus appears," observed the court, "that plaintiff has exhausted all possibilities of making service in this case. There being no likelihood that any effectual service can be made, the proper course is to dismiss the action."

Nichols v. Cowles Magazines, Inc., 108 F. Supp. 883. Nathan Moger of Boston, for plaintiff. J. N. Welch of Boston, for defendant.

MONTANA

Statute of limitations ruled operative during period Delaware corporation's charter continued revoked in home state, since Montana law provided method of service of process upon company during the period of revocation.

Plaintiff Delaware corporation's right to maintain an action in a Montana court to quiet title to certain real estate in Montana was resisted by the defendants. Plaintiff's charter had become inoperative in April, 1932, for nonpayment of taxes in Delaware. Thereafter, and prior to the bringing of this action, the plaintiff's charter was restored and revived under the provisions of the Delaware law. Considering the question whether the plaintiff corporation was subject to suit in Montana during the period when its charter was suspended for nonpayment of taxes due to the State of Delaware, the Supreme Court of Montana concluded that if it were assumed that the authority of the statutory agent appointed by the corporation was revoked upon revocation of the charter of the corporation in Delaware, the statutes of Montana still provided a method of obtaining service upon the corporation, by serving the Secretary of State.

The suit involving a mortgage on real estate executed by plaintiff to the defendants, securing an indebtedness evidenced by a promissory note, given as part of the purchase price of the land, the court concluded that the debt was barred by the Statute of Limitations, since defendants at all times since the making of the note had a remedy against the corporation for recovery of the debt, and that when the debt is barred, the lien given to secure it is extinguished. A judgment in favor of the plaintiff corporation in the lower court was affirmed.

Montana Valley Land Co. v. Bestul et al., 253 P. 2d 325. J. J. McIntosh and G. J. Jeffries of Roundup, for appellant Smith, Boone & Rimel and Russel E. Smith of Missoula, for respondent.

taxation

DISTRICT OF COLUMBIA

Foreign corporation, with an administrative office in District and also having salesmen from out-of-state offices soliciting orders in District, ruled subject to franchise tax.

In *Owens-Illinois Glass Company v. District of Columbia,* (The Corporation Journal, May, 1951, page 333), decided by the Board of Tax Appeals of the District of Columbia on January 12, 1951, it was held that a foreign corporation, although it had District customers, who were solicited by salesmen from out-of-state offices, was not doing business so as to have taxable income for franchise tax purposes, where the activities of the local office were restricted to attendance to administrative matters, such as the handling of legal and administrative details and the regular receipt of inquiries concerning the corporation's products.

Upon appeal, the Court of Appeals of the District of Columbia has reversed the ruling of the Board on this question, observing: "In our opinion extensive solicitation by salesmen, in the District, which results in a large volume of sales and shipments to customers in the District, is plainly 'commercial activity in the District.'"

*Owens-Illinois Glass Company v. District of Columbia,** United States Court of Appeals for the District of Columbia Circuit, January 8, 1953. James C. McKay (James E. Carr, on the brief), for petitioner. Harry L. Walker, Assistant Corporation Counsel for the District of Columbia, (Vernon E. West, Corporation Counsel, Chester H. Gray, Principal Assistant Corporation Counsel, and William S. Cheatham, Assistant Corporation Counsel, on the brief), for respondent.

* The full text of this opinion is printed in the CCH **District of Columbia Tax Reporter,** page 1787.

ILLINOIS

Where foreign corporation retired its preferred stock, issuing in lieu new preferred, it was required to pay an additional franchise tax on proportion of new preferred represented in Illinois, redemption of old and issuance of new stock being regarded as separate transactions.

This appeal involved a dispute as to the amount of additional Illinois franchise tax due as a result of certain transactions with respect to the capital stock of appellant New York corporation, effected in June 1947, and as to the

PREVENTIVE MEDICINE

THE Corporate BODY

to give him ulcers.

poration official will to fit together the wriggling, twis lings, regulations and court decisions of the differe finds they just will not stand still long enough.

the net result of his efforts to build a pattern for out erations — particularly after reviewing the seemingl court decisions bearing on the same point, sometime e state.

believe, one way to prevent that confusion.

to lawyers!

after looking over the court decisions discussed in o booklet, *Corporate Confusion.* Copies are available, on r ny CT office. Or write to The Corporation Trust Com roadway, New York 5, N. Y.

proper method of reporting those transactions to the Secretary of State of Illinois. Reports were made to that official and the tax demanded was paid under protest, followed by suit to secure a refund. The county court dismissed the complaint.

The appellant New York corporation filed a certificate with the Secretary of State of New York on June 13, 1947, entitled "Certificate of (1) Elimination of Shares Previously Authorized and Reduction of Capital; (2) Authorization of New Shares of Preferred Stock and Classification Thereof." By this certificate, the company cancelled $5,000,000 of 4¼% cumulative preferred stock and authorized the issuance of $7,500,000 of 3¾% cumulative preferred stock. The Secretary of State of Illinois insisted upon the filing of, first, a report of the cancellation of the $5,000,000 4¼% cumulative preferred stock, followed by a report of the issuance of the $7,500,000 3¾% cumulative preferred stock, and charged an additional franchise tax on the entire $7,500,000 that was represented in Illinois, even though the company had paid a franchise tax to July 1, 1948, based upon a stated capital that included the $5,000,000 of 4¼% preferred stock. The Illinois Supreme Court upheld the Secretary of State of Illinois in his assessment, finding it in accordance with the Illinois law, emphasizing that the "additional franchise tax" and the "annual franchise tax" are levied as separate taxes, and that there was no provision for applying an overpayment on the one as a credit upon the other.

*Jewel Tea Co., Inc. v. Rowe,** Illinois Supreme Court, March 23, 1953. Brown, Hay & Stephens of Springfield, and John W. Unger of Barrington, for appellant. Ivan A. Elliott, Attorney General, (William C. Wines and John T. Cowburn, of counsel), for appellee. Commerce Clearing House Court Decisions Requisition No. 491966. (*Note:* The Corporation Department of the Secretary of State's office has indicated that it regards the rule laid down in this case as not affected by the passage of House Bill 652, Laws of 1949, since no "exchange" of shares was involved in this case.)

* The full text of this opinion is printed in the **State Tax Reporter,** Illinois, page 536.

MARYLAND

Maryland use tax ruled collectible through attachment of delivery truck of seller, with respect to goods sold in Delaware store to Maryland customer, being delivered in Maryland.

The State of Maryland sought to recover the Maryland use tax from appellant Delaware company, not licensed in Maryland, which made deliveries of purchases effected at its store in Delaware, to customers residing in Maryland in its own vehicle. The State also filed a nonresident attachment suit and attached a station wagon owned by appellant, which appeared specially and sought to quash the writ of attachment on the ground that the assessment was unconstitutional.

The Court of Appeals of Maryland noted that the statute defined the term

"engaged in business in this State" as the selling or delivering in this State, or any activity in this State in connection with the selling or delivering in this State, of tangible personal property for use, storage or consumption within this State." "In view of this unusually broad definition of 'engaged in business,'" observed the court, "we must hold that the statute is applicable to appellant, because it delivered merchandise to purchasers in Maryland." The court upheld the validity of the tax, citing decisions of the Supreme Court of the United States, and denied the company's petition to quash the attachment.

Miller Bros. Co. v. State,* 95 A. 2d 286. William L. Marbury (James Piper and Piper and Marbury of Baltimore, Wm. Poole, James L. Latchum and Berl, Potter and Anderson of Wilmington, Delaware, on the brief), for appellant. Francis D. Murnaghan, Jr., Asst. Atty. Gen. (Edward D. E. Rollins, Atty. Gen., and Edward F. Engelbert, Asst. Director Retail Sales Tax Division, office of Comptroller, Baltimore, on the brief), for appellee.

* The full text of this opinion is printed in the **State Tax Reporter**, Maryland, page 6783.

OKLAHOMA

Interstate power company, with transmission line extending into state, ruled taxable on apportioned net income as a unitary business, although no sales were made to customers in state.

Plaintiff in error, a Delaware corporation authorized to do business in Oklahoma, with its principal office in Louisiana, appealed from an order of the Oklahoma Tax Commission assessing income taxes against it for the years 1944 to 1947, inclusive. In 1941 and 1942, the company built an electric transmission line from a point in Arkansas to a point in Oklahoma 164 miles in length, of which 137 miles were in Oklahoma, which it maintained during the years in question. It had no employees, officials or directors residing in Oklahoma and did no banking business there. It purchased from a company at the Oklahoma terminus of its line electric current which was transmitted over its own line for sale at wholesale and retail in Arkansas, Louisiana and Texas. It generated no electricity and made no sales of current in Oklahoma and directly captured no income in that state. The corporation filed an income tax for each of the years in question, showing a net loss for each year in excess of $50,000. although its net income over the period was in excess of fifteen million dollars. The Commission declined to accept the returns and proposed to assess taxes based upon net income as allocated to the property and operations of the company in accordance with the statutory formula. The company contended its business was wholly interstate.

The Supreme Court of Oklahoma sustained the order of the Commission levying a tax as proposed. The court emphasized the unitary character of the business and found authority for the tax in Section 876(a), Title 68 O. S. 1951, imposing the tax with respect to the entire net income which is derived from all property and business owned partly within and partly without the state, the taxable income to be deter-

mined according to the statutory formula provided in Section 878. The court quoted from numerous decisions of the Supreme Court of the United States, and regarded such taxation as not conflicting with the "commerce" and "due process" clauses of the Federal Constitution.

*Southwestern Gas & Electric Co. v. Oklahoma Tax Commission,** 253 P. 2d 549. Richard L. Arnold, Arnold & Arnold of Texarkana, Ark., and Lee B. Thompson, McInnis, Thompson & Sullivan of Oklahoma City, for plaintiff in error. R. F. Barry, W. F. Speakman and E. J. Armstrong of Oklahoma City, for defendant in error. *Note: This opinion supersedes a prior opinion of the court holding the corporation not subject to the state income tax, dated November 18, 1953 and digested in the April—May, 1953, Corporation Journal, page 214.*

* The full text of this opinion is printed in the **State Tax Reporter,** Oklahoma, page 1719.

TENNESSEE

Contracts of corporation with Government for rental of tanks for storage of Government-owned gasoline, ruled to give company no immunity from state privilege tax on storage of gasoline.

By 2 Williams Tennessee Code, Secs. 1126-1147, a special privilege tax is imposed upon distributors engaged, among other activities, in storing, transporting, and importing gasoline or distillate in the state, at the rate of six cents for each gallon. The appellant company, upon demand, paid such taxes, which it sought to recover. The tax was levied in connection with the storage in Tennessee, by appellant, under contracts with the Government, of gasoline which was the property of Defense Supplies Corporation, a corporation wholly owned by the Reconstruction Finance Corporation, specifically exempt from state storage and use taxes, 55 Stat. 248. The storage was in tanks in Tennessee rented by appellant. The United States agreed to assume liability for all state taxes, and being ultimately liable, intervened in the litigation and entered its plea, echoed by appellant, that the tax was barred by the constitutional doctrine of intergovernmental immunity; that to construe the Tennessee statute as applicable to storage of gasoline owned by the United States made it repugnant to the Constitution and void.

The Supreme Court of the United States affirmed the judgment of the State Court of Appeals, which had rejected the claimed immunity and held the statute valid as applied, observing that there must be found "either a stated immunity created by Congress in the exercise of a constitutional power, or one arising by implication from our constitutional system of dual government." Continuing, the court remarked: "Neither condition applies to the kind of governmental operations here involved. There is no claim of a stated immunity. And we find none implied. The United States, today, is engaged in vast and complicated operations in business fields, and important purchasing, financial, and contract transactions with private enterprise. The Constitution does not extend sovereign exemption from state taxation to corporations or individuals, contracting with the United States, merely because their ac-

tivities are useful to the Government. We hold, therefore, that sovereign immunity does not prohibit this tax."

Esso Standard Oil Company v. Evans, Commissioner of Finance and Taxation et al.,* Supreme Court of the United States, May 4, 1953; Docket Nos. 330 and 378. Commerce Clearing House Court Decisions Requisition No. 494646.

* The full text of this opinion is printed in the CCH **U. S. Supreme Court Bulletin**, page 1217.

state legislation

Arizona — The due date of the Annual Report and Fee of corporations has been changed from the month of June to on or before September 30, except in the case of corporations which have established an alternative fiscal year with the Arizona Corporation Commission, under Chapter 74.

Colorado — The additional annual license fee of $1. per store, which was imposed under the "Unfair Practices Act," has been repealed by S. B. 28.

Georgia — Act 489 has effected a repeal of the alternative or minimum income tax rate of 2% of entire net income plus salaries and other compensation paid to all elected and appointed officers and any stockholder owning more than 5% of the issued capital stock of the corporation or of any other corporation holding the capital stock of such corporation, after deducting $10,000. and any deficit. The tax had been assessed upon that base or the 5½% base, whichever produced the greater tax.

Act 328 alters the annual license tax law so as to bring about liability to the license or franchise tax on the part of sewing machine companies.

Indiana — Chapter 49 provides that every foreign corporation licensed to do business in Indiana, shall upon request of the Department of State Revenue, but in no case more frequently than once each year, be required to file with the department within 60 days after request (rather than by January 10 of each year), a list containing names and addresses of all Indiana shareholders and the amount of its stock held by each according to the latest available records of the corporation.

S. B. No. 19 amends various sections of the corporation law relating to consideration for issuance of stock, quorum of directors, waiver of notice of meetings of directors, compensation of directors, amended articles of incorporation and increase of capital.

Minnesota — Senate Bill 405 permits foreign corporations to have the registered office and principal place of business in different counties.

Nebraska—L. B. 272 amends Section 77-201 to provide that all property not expressly exempt is to be listed at actual value and assessed at 50% of the actual value. Previously, assessment was at actual value.

North Dakota—House Bill No. 715, effective July 1, 1953, provides that each foreign corporation shall maintain a registered office in the state which may, but need not be the same as its place of business in the state. Previously, the statutes provided that the registered office be maintained in the county in which a foreign corporation had its principal place of business, or if it had no place of business in the state, then such registered office was to be maintained in any county in which the corporation did or proposed to do business.

House Bill 723 continues the 2% sales tax for a two-year period beginning July 1, 1953.

South Dakota—Senate Bill 311 extends the operation of the use tax by applying it to the privilege of the use, storage or consumption in the state of tangible personal property not originally purchased for use in the state, but thereafter used, stored and consumed in the state.

appealed to the supreme court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

FLORIDA. Docket No. 287. *Polizzi v. Cowles Magazines, Inc.*, 197 F. 2d 74. (The Corporation Journal, February-March, 1953, page 192.) Service of process—doing business—jurisdiction. **Petition for writ of certiorari filed, August 20, 1952. Certiorari granted, October 20, 1952.** (73 S. Ct. 94.) **Argued, March 10, 1953.**

TENNESSEE. Docket Nos. 330 and 378. *Esso Standard Oil Company v. Evans, Commissioner of Finance and Taxation of the State of Tennessee et al.*, decided May 4, 1953. State privilege tax on storage of gasoline—government property—immunity of corporation under government contracts. **Appeal filed September 11, 1952. Judgment affirmed, May 4, 1953.** (See page 234.)

* Data compiled from **CCH U. S. Supreme Court Bulletin**, 1952-1953.

regulations and rulings

Arizona — The 2% gross income tax is meant to apply to all income derived from renting office space, if the primary business conducted by the owner of the premises is to supply office space to tenants. (Opinion of the Attorney General to the State Tax Commission, State Tax Reporter, Arizona, ¶ 65-005.)

Kentucky — Oil and gas rights are taxable for property tax purposes before it is known whether any oil or gas exists on the property. (Opinion of the Attorney General, State Tax Reporter, Kentucky, ¶ 24-074.)

Nebraska — Corn intended for export, but still in a Nebraska elevator, is subject to the state and local property taxes. It does not become a part of the flow of interstate commerce, and thus tax free, until it is actually on the carrier and has a destination. (Opinion of the Attorney General to the County Attorney, Lexington, State Tax Reporter, Nebraska, ¶ 24-506.)

New York — An additional tax is payable by a real estate corporation at the time of its liquidation without dissolution based on dividends, not the basis of any previous additional franchise tax, and surplus. The apportionment of such dividends and surplus is made on the basis of assets determined by the report showing the proportion of assets within and without the state during the calendar year preceding the liquidation. (Opinion of the Attorney General to the Department of Taxation and Finance, State Tax Reporter, New York, ¶ 98-294.)

A cash distribution to stockholders is a dividend includible in income subject to normal personal income tax where there is a corporate surplus as a result of appreciation in value of assets to which such distribution is charged, and it is immaterial that the proceeds of a construction loan from a Federal agency furnished the immediate funds therefor. (Opinion of the Attorney General to the Department of Taxation and Finance, State Tax Reporter, New York, ¶ 98-319.)

Ohio — A domestic corporation must pay the franchise tax on its investments in the stock of a foreign corporation. (Ruling of Board of Tax Appeals, State Tax Reporter, Ohio, ¶ 200-209.)

South Dakota — There is no time limitation after which personal property tax liens cease to be enforceable against the personal property owned by the tax debtor. The personal property tax is not a "debt" in the ordinary sense of the word, and hence the statute of limitations will have no application. (Opinion of the Attorney General, State Tax Reporter, South Dakota, ¶ 24-042.)

Washington — A foreign corporation which has complied with the statutory prerequisites to do business within this state may take or hold deeds of trusts and mortgages and may avail itself of proper legal remedies to enforce payment of the debts secured by such mortgages and would be entitled to sell and make proper conveyances of real property which it held as such trustee. (Opinion of Attorney General to the Supervisor of Banking, State Tax Reporter, Washington, ¶ 3-001.)

some important matters

For June and July

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

Alaska — Returns of Tax Withheld at the source due on or before July 31.—Domestic and Foreign Corporations.

Arkansas — Anti-Trust Affidavit due on or before August 1.—Domestic and Foreign Corporations.

California — Quarterly Retail Sales Tax Returns and payments due on or before July 31.—Domestic and Foreign Corporations.

Connecticut — Quarterly Retail Sales Tax Returns and Payments due on or before July 31.—Domestic and Foreign Corporations.

Delaware — Annual Franchise Tax due between April 1 and July 1.—Domestic Corporations.

Dominion of Canada — Income Tax Return due on or before June 30.—Domestic and Foreign Corporations.

Florida — Annual Report and Fee due on or before July 1.—Domestic and Foreign Corporations.

Idaho — Annual Statement and Annual License Tax due between July 1 and September 1.—Domestic and Foreign Corporations.

Illinois — Annual Franchise Tax due on or before July 1, but may be paid up to July 31 without penalty.—Domestic and Foreign Corporations.

Indiana — Annual Report due within 30 days after June 30.—Domestic and Foreign Corporations.

Quarterly Gross Income Tax Returns and Payments due on or before July 31.—Domestic and Foreign Corporations.

Iowa — Annual Report due between July 1 and August 1.—Domestic and Foreign Corporations.

Statement of Capital and Property Increase due at the time of filing the Annual Report in July.—Foreign Corporations.

Report of certain Transfers of Stock due on or before July 1.—Domestic Corporations.

Quarterly Retail Sales Tax Returns and Payments due on or before July 20. Domestic and Foreign Corporations.

Kentucky — Statement of Existence due in June.—Foreign Corporations.

Verification Report as to process agent due in June.—Domestic and Foreign Corporations.

Maryland — Quarterly Return of Tax Withheld at source due on or before July 31.—Domestic and Foreign Companies.

Michigan — Report of Unclaimed Moneys, Securities, Credits, etc., due on or before June 30.—Domestic and Foreign Corporations.

Mississippi — Annual Report and Fee to Factory Inspector due in July.—Domestic and Foreign Corporations employing 5 or more persons in Mississippi.

Annual Franchise Tax Report and Tax due on or before July 15.—Domestic and Foreign Corporations.

Missouri — Annual Registration Statement and Anti-Trust Affidavit due on or before July 31.—Domestic and Foreign Corporations.

Quarterly Retail Sales Tax Returns and Payments due on or before July 15.—Domestic and Foreign Corporations.

Montana — Annual License Tax based on net income due on or before June 15.—Domestic and Foreign Corporations.

Nebraska — Annual Report and Franchise (Occupational) Tax due on or before July 1.—Domestic Corporations.

Annual Report and Franchise (Occupational) Tax due during July.—Foreign Corporations.

Nevada — Annual List of Officers and Designation and Acceptance of Resident Agent due on or before July 1.—Domestic and Foreign Corporations.

North Carolina — Annual Franchise Tax Report and Tax due on or before July 31.—Domestic and Foreign Corporations.

North Dakota — Corporation Report due during July.—Domestic Corporations.

Quarterly Retail Sales Tax Returns and Payments due on or before July 20.—Domestic and Foreign Corporations.

Ohio — Annual Franchise Tax due on or before July 15.—Domestic and Foreign Corporations.

Retail Sales Tax Returns and Vendors' Excise Tax due on or before July 31.—Domestic and Foreign Corporations.

Oklahoma — Annual Capital Stock Affidavit due between July 1 and August 1. —Foreign Corporations.

Oregon — Annual Report due between June 1 and July 15.—Domestic and Foreign Corporations.

Annual License Fee due within 30 days after July 15.—Domestic Corporations.

Returns of Withholding at the source due on or before July 31.—Domestic and Foreign Corporations.

Annual License Fee due between July 1 and August 15.—Foreign Corporations.

South Dakota — Quarterly Retail Sales Tax Returns and Payments due on or before July 15.—Domestic and Foreign Corporations.

Tennessee — Annual Privilege (Franchise) Tax Return and Payment, Annual Report and Tax and Excise Tax Report and Tax due on or before July 1.—Domestic and Foreign Corporations.

Report of Dividends paid to residents due on or before July 1.—Domestic and Foreign Corporations.

United States — Second Installment of Income Tax due June 15.—Domestic Corporations and Foreign Corporations having offices or places of business in the United States.

Withholding at source due on or before July 31.—Domestic and Foreign Corporations.

Washington — License Fee due on or before July 1.—Domestic and Foreign Corporations.

West Virginia — License Tax Statement due on or before July 1.—Domestic Corporations.

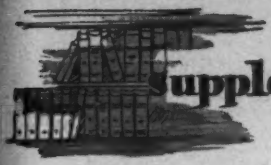
Annual License Tax due on or before July 1.—Domestic and Foreign Corporations.

Fee to State Auditor as Attorney in Fact due on or before July 1.—Foreign Corporations and those Domestic Corporations whose principal place of business or chief work are located in other states.

Quarterly Business and Occupation (Gross Sales) Tax Returns and payments due on or before July 30.—Domestic and Foreign Corporations.

Wisconsin — Second Installment of Income Tax due on or before August 1.—Domestic and Foreign Corporations.

Wyoming — Annual Statement and License Tax due on or before July 1.—Domestic and Foreign Corporations.



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In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York 5, N. Y.

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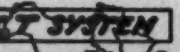

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